Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re

Review of the
Prime Time Access Rule,
Section 73.658(k)
of the Commission's Rules

MM Docket No. 94-123

REPLY COMMENTS OF THE ASSOCIATION OF INDEPENDENT TELEVISION STATIONS, INC.

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The Association of Independent Television Stations, Inc. ("INTV"), hereby submits its reply comments in the above-captioned proceeding.[1] INTV's interest and position have been delineated in comments filed in this proceeding on March 7, 1995.[2] INTV also was a co-sponsor of *The Economic Effects of Repealing the Prime Time Access Rule: Impact on Broadcasting Markets and the Syndicated Program Market* (*Economic Report*), prepared by the Law and Economics Consulting Group, Inc., for INTV, King World Productions, and Viacom, Inc. The *Economic Report* was submitted under separate cover also on March 7, 1995.

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[1]*See Notice of Proposed Rule Making*, MM Docket No. 94-123, FCC 94-266 (released October 25, 1994) [hereinafter cited as *Notice*].

[2]Comments of the Association of Independent Television Stations, Inc., MM Docket No. 94-123 (filed March 7, 1995) [hereinafter cited as "INTV"].

I. INTRODUCTION

The following reply comments consist of two major elements. In addition to the body of the reply comments themselves, INTV also is submitting as Exhibit One to these reply comments a separate response to *An Economic Analysis of the Prime Time Access Rule* prepared on behalf of the three entrenched networks (ABC, CBS, and NBC) and filed with the Commission on March 7, 1995.[3] The network's *Economic Analysis* is the most comprehensive analysis offered by proponents of repeal of all or part of the Prime Time Access Rule. Thus, it warrants a separate response.[4]

The reply comments themselves generally are organized to present responsive comments pertinent to the various markets which might be affected by the Commission's action in this proceeding. Whereas some overlap between the reply comments and the response to the *Economic Analysis* is inevitable, INTV has sought to avoid redundant argument as much as possible.

INTV respectfully submits that the evidence before the Commission demands retention of the Prime Time Access Rule. The time may come when the rule has outlived its usefulness, but that time is not today. For the foreseeable

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[3]Economists Incorporated, *An Economic Analysis of the Prime Time Access Rule* (March 7, 1995) at 1 [hereinafter cited as *Economic Analysis*].

[4]INTV Staff, *A Critical Aside and Commentary on "An Economic Analysis of the Prime Time Access Rule,"* attached hereto as Exhibit One [hereinafter cited as *CAC*].

future, the broadcast industry will be characterized by stronger and weaker castes -- predominantly VHF stations affiliated with the three entrenched networks and predominantly UHF stations either affiliated with emerging networks or operating as pure independents. In the years to come, the distinction may fade. In the coming years, broadcast television may have witnessed the full emergence of three new networks to parity with their entrenched network competitors -- ABC, CBS, and NBC. In the meantime, the Commission must decide whether its regulatory polices continue to spur and support the emerging networks or enable the entrenched networks to strengthen their position on broadcasting's high ground. INTV respectfully submits that the former course is the only rational course for a Commission intent on fostering competition and diversity in the video marketplace.

II. SUMMARY

No argument, data, or other evidence submitted by proponents of repeal of the Prime Time Access Rule or off-network provision raises any material doubt that the Prime Time Access Rule should be retained.

Glib assertions that the UHF handicap has disappeared ignore reality. The only serious analysis of the issue, the replication of the 1979 Park study is severely flawed and unworthy of any weight. Furthermore, data submitted with the networks' own *Economic Analysis* confirm that UHF stations suffer greater audience reductions in cable homes than their VHF competitors. One only need compare the size of the off-air coverage area of VHF and UHF stations in any television market to erase any doubt that the UHF handicap is real. This disparity in coverage is *not* cured by cable television, which is required to carry signals only within their off-air coverage area. Finally, Fox's expenditures and efforts to secure VHF affiliates to replace their current UHF affiliates confirm that UHF stations still suffer a genuine disadvantage *vis-a-vis* their VHF competitors.

Efforts to dispute the relative financial weakness of predominantly UHF are similarly unavailing. Data are presented in a bogus and deceptive manner. Proper comparisons, however, confirm the long-standing disparity in financial strength and performance between network affiliates and their independent station and emerging network affiliate competitors.

In the face of substantial and reliable evidence produced by INTV demonstrating the harm which independents would suffer if the Prime Time Access Rule were repealed, proponents of repeal do little more than snipe speciously at the margins of the issue. They point to data suggesting that independent stations and emerging network affiliates no longer rely as heavily on off-network programming in access. A more penetrating analysis reveals, however, that their data reflects anomalous and temporary circumstances. They argue, too, that affiliates would have little or no interest in using off-network programming in access, ignoring the views of the networks' economic consultant and the profitability of such a strategy for network affiliates. Thus, they offer no credible evidence to discount INTV's findings that independent stations and emerging network affiliates would be harmed by repeal of the Prime Time Access Rule or the off-network provision thereof.

The networks and their affiliates tussle over their relative bargaining power, each claiming to be at the others mercy. In reality, however, the networks largely disprove their own case through their constant recitations of the overwhelming efficiencies of network program distribution. Their presumed ability to enter the first-run and off-network syndication markets, coupled with their ability to produce programming in-house, will only spread their tentacles and strengthen their hands *vis-a-vis* their affiliates.

The networks' claims of injury define myopia. However inconvenient the Prime Time Access Rule may be to the networks' pursuit of their self interest, the rule has stimulated development of more competition in the video exhibition and advertising markets than the networks could have imagined in their worst nightmares. Certainly, they would like to stifle that competition (*i.e.*, the emergence of new broadcast networks), but to dash the promise of a more diverse and competitive broadcast industry simply to preserve the exalted position of the entrenched networks would serve no known interest in competition or diversity.

Similarly myopic are the arguments of those claiming injury to the off-network syndication market at the hands of the Prime Time Access Rule. The program production and syndication markets benefit more in the long run from an increase in the number of broadcast stations and networks than from the addition of three competitors for one hours worth of programming per day. In any event, the staple of access programming for independents and emerging network affiliates is the off-network sitcom, which hardly is in line for a mention on the endangered species list. Next fall, as ever, network schedules will be peppered with new and returning half-hour sitcoms, the more successful of which undoubtedly will populate the off-network syndication market of the future.

Those who trumpet the vitality of the first-run syndication market neglect that the issue is non-network, prime time first-run syndication. Repeal of the Prime Time Access Rule would destroy the market for such programming. Affiliates of the entrenched networks would shift to network or off-network programming. (If they had no intention of doing so, why do they push for repeal of the rule.) Independent stations and emerging network affiliates, however, could not support the expensive, highly popular first-run programming now shown on affiliates. Thus, it would disappear. Those who point to the use of first-run programming by affiliates in the second 50 markets ignore that the market for first-run syndicated access programming is made in the top 50 markets, where the Prime Time Access Rule applies.

The complaint that the Prime Time Access Rule has created an artificial market for a handful of syndicators ignores the intense and continuing competition for access slots by many, many first-run syndicators. They also neglect that at any given time, only a few firms may be successful in prime access because only a limited number of program slots are available. Producers and syndicators seek no assurance of success, but only wish to maintain access to the market, which would be obliterated by network or off-network programming if the Prime Time Access Rule were repealed.

Any transitional mechanism must be based on specific changes in the factual landscape. Pertinent areas for future review include true elimination of the UHF handicap, actual parity between the competing and entrenched networks with respect to off-air coverage (not just market coverage), amount of programming provided, and ratings comparability. The Commission also should recognize that any pre-determined sunset of the rule will have effect well before the actual sunset, given the industry practice of acquiring programming as much as three years in advance of its broadcast date.

In the final analysis, the Commission ought retain the Prime Time Access Rule because viewers will benefit more from efforts to strengthen the foundation of new broadcast stations and networks than from policies which allow the entrenched networks to expand and fortify their positions. The entrenched networks already will be taking advantage of new flexibility as the financial interest and syndication rules sunset. On the other hand, predominantly UHF independent stations and emerging network affiliates will continue to be handicapped by the Commission's scheme of television channel allotments. Yet, these new stations and networks will contribute more to competition in the advertising, syndication, production, and video exhibition markets than any marginal change in the access programming of entrenched network affiliates in the top 50 markets. Therefore, the Prime Time Access Rule should remain a key element of the Commission's regulation of broadcast television unless and until competitive parity exists between the now entrenched and emerging networks.

III. FACTUAL CONTEXT

INTV has shown through its *Economic Report* that the UHF handicap remains real and that independent stations and emerging network affiliates remain financially less secure than competing stations affiliated with the three entrenched networks. Some commenting parties have attempted to cast doubts about both these features of the broadcast television marketplace. As set forth below, however, their efforts are unavailing.

A. The UHF Handicap Is Real and Remains a Defining Characteristic of Broadcast Television.

The networks tout their efficiencies *ad nauseam* and claim their dominant position in the broadcast and video marketplaces as pure products of those efficiencies.[5] What the networks choose to ignore and/or discount is another defining characteristic of the broadcast marketplace -- the UHF handicap. As stated in INTV's commentary on the networks' *Economic Analysis* :

> On the other hand, the Commission's spectrum allocation policies are very much the root of the current competitive imbalance between the traditional networks (ABC, CBS, NBC) and the emerging networks (Fox, UPN, Warner Bros.). The finite number of VHF television channels long ago were gobbled up by the traditional networks. This has provided them an insurmountable distribution and coverage advantage *vis-a-vis* their emerging network competitors.[6]

Indeed, the emerging networks, which enjoy the same economies of television networking as their three entrenched competitors (save for actual audience coverage), fail to achieve audience levels comparable to those of the three entrenched networks.[7]

Nonetheless, numerous parties, several of which enjoy the superior position afforded them by the UHF handicap, have argued strenuously, but hardly persuasively, that the UHF handicap is no more.[8] Most attribute this to the growth

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[5]*See, e.g., Economic Analysis* at 1.

[6]*CAC* at 1.

[7]*CAC* at 1, n.4.

[8]Comments of the National Broadcasting Company, MM Docket No. 94-123 (filed March 7, 1995) at 32 [hereinafter cited as "NBC"]; Comments of the FTC Bureau of Competition, MM Docket No. 94-123 (filed March 7, 1995) at 32 [hereinafter cited as "FTC Bureau"]; Comments of CBS, Inc., MM Docket No. 94-123 (filed March 7, 1995) at 7,20 [hereinafter cited as "CBS"]; Comments of Capital Cities/ABC, Inc., MM Docket No. 94-123 (filed March 7, 1995) at 3, 15 [hereinafter cited as "ABC"]; Comments of the Coalition to Enhance Diversity, MM Docket No. 94-123 (filed March 7, 1995) at 26, 28 [hereinafter cited as "Coalition"]; Comments of the Network Affiliated Stations Alliance, MM Docket No. 94-123 (filed March 7, 1995) at 7 [hereinafter cited as "NASA"]; Economists Incorporated, *An Economic Analysis of the Prime Time Access Rule,* MM Docket No. 94-123 (filed March 7, 1995) at 9 [hereinafter cited as

of cable television.[9] INTV already has demonstrated the reality of the UHF handicap and exploded the myth that cable television has tended to eliminate or reduce the handicap.[10]

Little more than bald assertions are offered by those who now seek to discount the UHF handicap. Only the *Economic Analysis* (at Appendix C) provides any analysis in support of its argument in the form of a replication of a study done some 15 years ago by Rolla Park, but its conclusions are unworthy of note. First, the Park replication analysis is unreliable.[11] Second, data provided with the *Economic Analysis* itself shows that independents and Fox affiliates, most of which are UHF stations, suffer greater audience reductions in cable households versus non-cable households than their predominantly VHF entrenched network affiliate competitors.[12] These results only confirm that the UHF handicap remains real, despite the efforts to make it appear, at least, to disappear.

Economic Analysis].

[9]*Id.*

[10]INTV at 23; *Economic Report* at 31-44.

[11]*See CAC* at 6.

[12]*Id.*

Third, UHF television signal coverage simply falls short of VHF signal coverage.[13] This is a technical fact-of-life which has haunted UHF broadcasting since its inception.

Fourth, cable television has limited, if any, off-setting effect. The essence of the handicap is the disparity in coverage area between UHF and VHF signals. Whereas cable carriage may (or may not) provide a better quality picture for UHF stations within its off-air coverage area, it does not necessarily extend a UHF station's coverage into areas not already reached by the UHF station's signal. Even assuming that the current "must carry" rules are upheld in the face of the pending challenge to their constitutionality, they do not require a cable system to carry a television station beyond its off-the-air signal coverage area.[14]

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[13]A cursory inspection of coverage maps for Washington, D.C., stations shows, for example, that the predicted grade B contours of the four VHF stations (WRC, WTTG, WMAL, WUSA) extend to or beyond Hagerstown, Maryland, to the northwest, and into Pennsylvania to the north, while the predicted grade B contours of the UHF stations (WDCA, WFTY) extend only to Frederick, Maryland, to the northwest, and fall well short of the Pennsylvania border to the north. Similarly, the average weekly circulation even in cable households for the four VHF stations ranges from 1,000,633 to 1,089,558 while the average weekly circulation for the UHF stations in cable households ranges from 120,931 to 774,035. *Television & Cable Factbook*, Vol. 63 (1995) at A-218 - A-223.

[14]47 CFR §76. 55 (c)(3). Only if a station assumes the cost of providing a good quality signal to a cable head-end beyond the boundaries of its good quality off-air signal area does a cable system then have to carry the station. In the absence of the "must carry" rule, history suggests that carriage of UHF independent stations becomes problematic at best. The disparity in weekly circulation in cable households between the UHF and VHF stations in Washington, D.C. stations (*See* n. 13, *supra*) provides ample evidence that cable penetration in a market is not the slightest assurance that UHF stations will achieve parity of exposure *vis-a-vis* their affiliate competitors.

If any doubt about the continuing reality of the UHF handicap existed, Fox's efforts to switch from UHF to VHF affiliates readily would dispel such doubts.[15] The Fox network has not spent hundreds of millions of dollars in its quest to switch affiliations to VHF stations just for the fun of it.[16]

The chorus of complaints that independent television no longer needs "infant industry" protection misses the point.[17] No amount of time will overcome the UHF handicap. Predominantly UHF independent and emerging network affiliates will suffer the disadvantage of the UHF handicap 'til doomsday. No matter how "mature" independent television and emerging networks may become, they will remain handicapped by inferior technical transmission facilities.

Therefore, the three entrenched networks gain their advantage in the marketplace from their predominantly VHF affiliate bases. Pending a change in the laws of physics or a drastic reallotment of television spectrum, this advantage will be insurmountable and enduring.

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[15]Even ABC readily admits that affiliate outlets are not fungible. ABC at 9.

[16]*See CAC* at 1, n.3.

[17]CBS at 22; NBC at 33; Coalition at 24; Williamson, Oliver E. & Woroch, Glenn A., *A Comparative Efficiency Analysis of the FCC's Prime Time Access Rule,* MM Docket No. 94-123 (file March 7, 1995) at i, 9 [hereinafter cited as "W&W"].

B. Efforts to Show That Fox Affiliates and Independents Are As Financially Well Off As Affiliates of the Three Entrenched Networks Are Bogus and Unavailing.

Independents and Fox affiliates still lag their entrenched affiliate competitors in terms of financial strength and performance.[18] Nonetheless, the networks and their consultants tilt the mirrors in a remarkably clever fashion to create the misimpression that independent stations, Fox affiliates, and UHF independents are in a financial posture comparable to or stronger than that of their own affiliates.[19] As discussed in more detail in staff critique of the *Economic Analysis*, their presentation and selection of financial parameters produces comparisons which only may be described as "bogus and deceptive."[20] A comparison of similarly situated stations (market-wise) reveals the long-standing disparity in financial strength and performance between network affiliates and their independent and emerging network competitors. *See* Figure One, *below.* [21]

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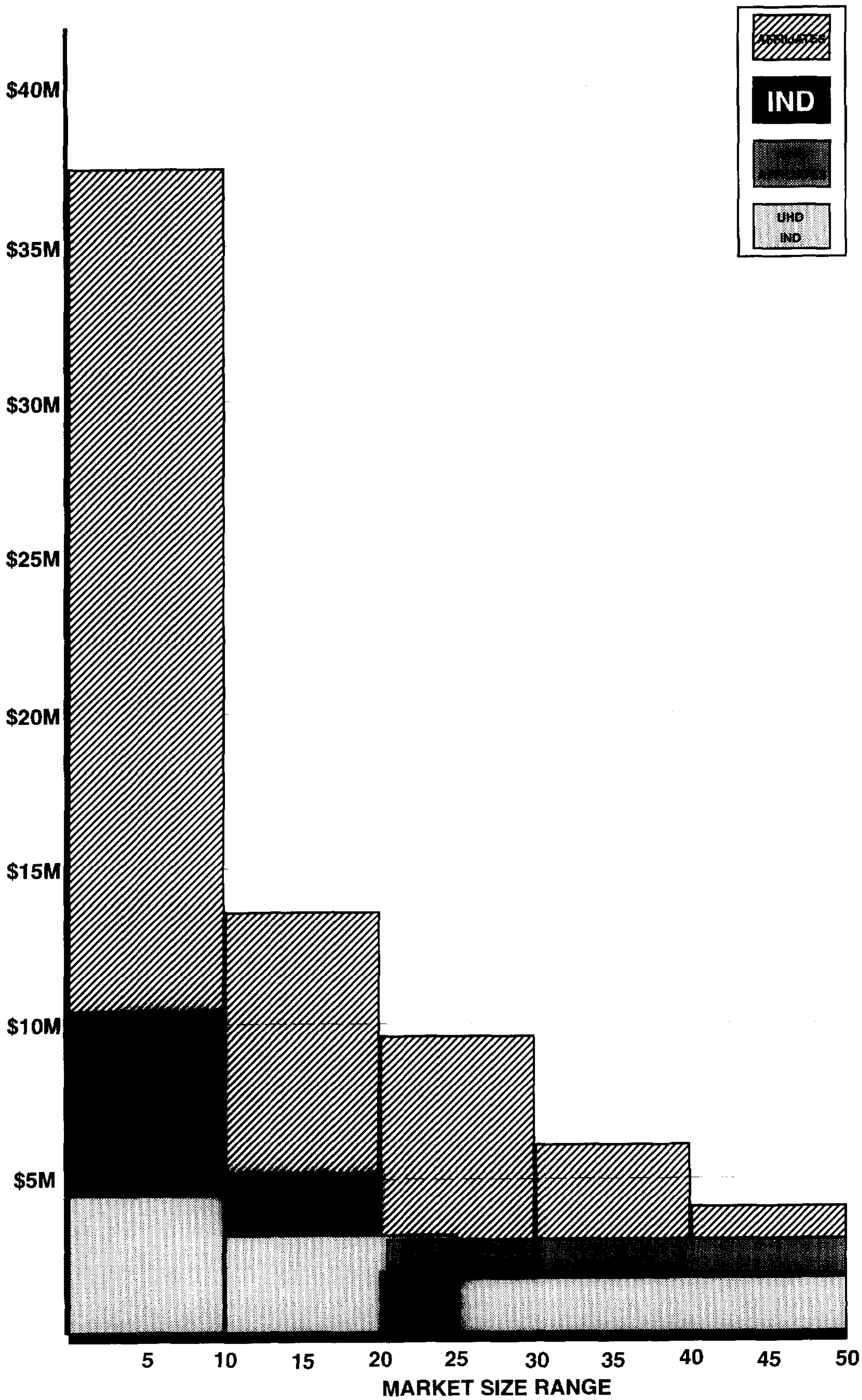
[18]INTV at 23; *Economic Report* at 31 *et seq.*

[19]NBC at 33; ABC at 15; *Economic Analysis* at 53-54.

[20]*CAC* at 32. The failure of the networks' consultant to do more than acknowledge the skew in industry-wide averages resulting from the considerably higher revenue bases of stations in the largest markets is the primary flaw in the figures illustrating the supposed financial parity of independents and affiliates.

[21]Complaints that many independents are owned by "groups" (just like O&Os and affiliates, one might add) and, therefore, unworthy of the "subsidy" provided by the Prime Time Access Rule are ludicrous. Coalition at 25; NASA at 13; On the same theory, the might just as easily question why well-heeled group-owned O&Os and affiliates should retain their VHF channels.

FIGURE ONE • AVERAGE CASH FLOW BY MARKET RANGE



SOURCE: 1993 NAB TELEVISION FINANCIAL REPORT

This disparity in financial performance and strength between independents and emerging network affiliates on one hand and affiliates of the three entrenched networks on the other is, of course, very much a product of the UHF handicap.[22]

[22]*See Economic Report* at 31 *et seq.*

IV. MARKET ANALYSIS

A. The Broadcast Television Market

No one can doubt that broadcast television is one of a growing number of competitors in the distribution and exhibition of video programming. At the same time, no one may deny that broadcasting uniquely remains the only nationwide, ubiquitous, free video service -- and, indeed, the only locally-oriented video service for a substantial portion of the population. Thus, while acknowledging that broadcast television faces substantial competition from non-broadcast video providers, which contribute materially to the diversity of programming available, INTV continues to see broadcast television service as an especially valuable resource to the nation and one which regulatory actions should strengthen. The difference of opinion in this proceeding involves how best to strengthen a broadcast industry which undeniably is showing the effects of competition from non-broadcast video media.

INTV firmly believes that the potential of the broadcast industry to respond to competition from non-broadcast media is far from exhausted. More stations and more networks can and will provide more competition and more diversity unless the Commission embraces the notion that the sky is falling and seeks only to strengthen the already dominant position of the three entrenched networks and their affiliates. No such short-sighted compromise should even enter the Commission's mind. Instead, the Commission should adopt and maintain regulatory approaches which continue to encourage growth rather than retreat and consolidation in broadcasting. To that end, the Commission must have a realistic appraisal of the state of the industry. Those who favor repeal of the Prime Time Access Rule, however, have sought to obscure the truth and foist a very self-serving view of the industry on the Commission.

1. Independent Stations and Emerging Network Affiliates

The comments filed in this proceeding reflect a broad general agreement that the Prime Time Access Rule has been, is, and will continue to be beneficial to independent stations and emerging network affiliates.[23] The inescapable implication is that repeal of the Prime Time Access Rule or off-network provision would eliminate this benefit and, thus, cause harm to independents and emerging network affiliates. Indeed, INTV has produced substantial reliable evidence that independents and emerging network affiliates would suffer material losses in audience and revenue, which would in turn undermine their "quality" and viability.[24]

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[23] *See, e.g.*, CBS at 20; *Economic Analysis* at 44; Comments of the Small Business Administration, MM Docket No. 94-123 (filed March 7, 1995) at 24 [hereinafter cited as "SBA"]; W&W at i, 20.

[24] INTV at 41-64; *Economic Report* at 45-56.

Proponents of repeal of the rule, nonetheless, found it impossible to resist the temptation to snipe at the margins of the issues relating to harm to independent television and emerging networks in the event the rule is repealed or modified.[25] Their arguments, however, enjoy no valid empirical or rational support.

First, some argue that independents would suffer no harm because they use little off-network programming in access. They cite data which shows that independents (including Fox affiliates) in PTAR markets used off-network programming only 40% of the time in prime access in November, 1994.[26] This contrasts with a 56.3% figure compiled by INTV for November, 1993.[27] It also is somewhat askew of a 42.1% figure for February, 1995.[28]

The results of the networks' analysis reflect an anomalous circumstance, and any downturn in use of off-network programming likely is temporary. First, November, 1994, is unusual in light of the effects of the affiliate re-ordering flowing from the Fox-New World deal. The inclusion of stations switching from an entrenched network to Fox (with their commitments to first-run programming in access) would boost the first-run usage figure. Second, 1994 was not a banner year

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[25]The continuing reality of the UHF handicap and the relatively weaker financial condition of independents, emerging network affiliates, and UHF independents and emerging network affiliates, in particular, has been covered in Part III, Sections A & B, *supra*.

[26]ABC at 17.

[27]INTV, exhibit 2 at 1.

[28]*See* Exhibit Two.

for off-network syndication (*i.e.*, no bounty of new off-network hits was available for use in fall, 1994. *Fresh Prince of Bel Air* was the only new half-hour off-network program that offered the prospect of solid access ratings. Only one other off-network sitcom debuted in fall, 1994,*Doogie Howser, M.D.*.[29] At the same time, the off-Fox *Simpsons* made its debut. Shows coming available in 1995 are likely to boost the off-network figure. They include two super hits, *Home Improvement* and *Seinfeld.* [30] Third, 38 independent stations in the top 50 markets broadcast only off-network programming during access, and 23 more used off-network programming in one half-hour of access.[31] Similarly, 26 top-50 market Fox affiliates used off-network programming in at least one half-hour of access in February, 1995.[32] Thus, no real doubt has been created that off-network programming will be the cream of access programming for independents and emerging network affiliates alike well into the future -- unless the Prime Time Access Rule is repealed.

At the same, some suggest that network affiliates would have little or no interest in using off-network programming.[33] These claims are belied by their quest

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[29]*Broadcasting & Cable* (January 16, 1995) at 74; *Electronic Media* (October 4, 1993) at 36. *Coach* also completed its roll-out in 1994, but was no match for *Fresh Prince. Evening Shade* went to cable.

[30]*Id.*

[31]*See* Exhibit Two, attached hereto.

[32]*Id.*

[33]NASA at 15.

for elimination of only the off-network provision of the Prime Time Access Rule. Furthermore, INTV has presented substantial evidence that network affiliates would shift to off-network programming because it is more profitable.[34] This would drive off-network prices up, either increasing independent stations expenses with no commensurate increase in revenue or effectively depriving independent stations of access to the off-network hits which have defined their prime access franchise. In either event, independent stations would suffer financial harm.

Additionally, contrary to the unfounded assertions of NASA, marginal independents have benefitted from the Prime Time Access Rule and would be hurt by its demise.[35] INTV's *Economic Report* shows that independent stations in the smaller markets among even the top 30 markets would suffer even greater audience losses than their counterparts in larger markets.[36] Furthermore, the more marginal independents are the potential affiliate base for emerging networks.

Thus, no valid argument or reliable evidence has been submitted to undermine the notion that independent television stations and emerging network affiliates would suffer no harm if the Prime Time Access Rule or its off-network provision were repealed.

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[34]INTV at 45-51; As noted by the FTC Bureau of Competition, profit is the key. Bureau at 8; *see also* Friends at 2.

[35]NASA at 19.

[36]*Economic Report,* Appendix D at 60.

2. The Network-Affiliate Relationship

The networks denigrate their ability to force affiliates to clear network programming in what is now prime access if the Prime Time Access Rule were repealed. They claim, for example, that the availability of other networks is a powerful check on their ability to force anything on their own affiliates.[37] They point to the lack of evidence that they have forced or could force their affiliates to clear network programs.[38] They note that they have increased network compensation to the tune of $200 million in the wake of the Fox-New World deal.[39] All in all, they say, their affiliates need them less than they need their affiliates.[40]

Ultimately, however, they give themselves away. They unceasingly chant the economic efficiencies of networking and posit that affiliates would clear network programming because it is more cost-effective.[41] They propound the benefits of repeal of the rule for consumers, who now would be able to watch what they really

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[37]ABC at 8.

[38]NBC at 24. In the same breath, NBC also states that no evidence ever existed that the networks favored their affiliates in syndication. *Id.* This is inaccurate. *See* Further Comments of the Association of Independent Television Stations, Inc., MM Docket 90-162 (filed November 21, 1990), Exhibit 5.

[39]NBC at 28; CBS at 18.

[40]CBS at 19.

[41]NBC at 27; *see also* Bureau at 7.

want -- expensive network programming![42] This reveals just how sure the networks are that if they transmit, it will clear.

Furthermore, the affiliates appear just as sure that the networks would have their way with them.[43] They claim that its the affiliates that need the networks more.[44]

INTV respectfully submits that the networks will maintain the upper hand. First, the Fox -New World deal shows that affiliate switches come only at a price -- a high price, in that case half a billion dollars. No affiliates have sought to switch networks just because it suited their fancy, Indeed, stations have fought vigorously to maintain their affiliations. Second, the networks may have increased compensation to their affiliates, but they received much in return in the form of long-term affiliation agreements and contractual provisions providing incentives to clear network programming and disincentives to pre-empt.[45]

Third, the networks may soon enjoy new paths to prime access. The presumed demise of the remaining network financial interest and syndication rules will enable the networks to funnel programming to their affiliates via the

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[42]ABC at 13; NBC at 35.

[43]NASA at 11; Coalition at 21; MPAA at 10.

[44]MPAA at 8; NASA at 5.

[45]*See* W&W at 9.

syndication market (both first-run and off-network). A legitimate concern exists that such funneling may result in involuntary placement of network-owned syndicated programming in the access period.[46] At the very least, the ability to control syndication of first-run and off-network programming will add another weapon to the networks' arsenal in the ongoing battle with their affiliates over clearances.[47]

In sum, repeal of the Prime Time Access Rule is most likely to facilitate network re-entry (in one form or another) into at least a half-hour of prime access.

3. The Entrenched Broadcast Networks

The networks are quick to parade the purportedly adverse effects of the Prime Time Access Rule on their own interests. The are equally quick to disclaim their own power in the broadcast market.[48] Much of what they say, however, only places

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[46]W&W at 27-28.

[47]The networks' O&Os are functionally gatekeepers of the first-run market. With their own entry into the first-run market, they will exert enormous control over the initial clearances in large markets without which no first-run program can succeed. Additionally, by virtue of this control over initial entry and supply, they will exert enormous power over distribution. In short, the networks will decide which shows succeed and how they are distributed. They also soon may secure the ability to control off-network syndication of many of their network shows -- this enhanced by their greater reliance on in-house production. This almost inevitably would lead to a network takeover of what is now prime access in short order. In this respect, INTV urges the Commission to take note of the network's interests in assuring their ability to provide syndicated programming for access if only the off-network provision of the Prime Time Access Rule is repealed. *See NBC* at 40; CBS at 26-27.

[48]ABC at 6; NBC at 9, 13, 23.